IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

RICHARD QUILL, Plaintiff, v. CHARLES A. MALIZIA, MICHELLE MALIZIA, and RODNEY STREET ASSOCIATES, INC., a Delaware Corporation, Defendants.	)	C.A. No. 2239-S

MEMORANDUM OPINION

Date Submitted: December 6, 2004
Date Decided: March 4, 2005

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STRINE, Vice Chancellor.

I. Introduction

This case arises as the culmination of a falling out between two cousins, Richard Quill and Charles Malizia. Richard and Charles, along with Charles's then-wife Michelle (together, the "Cousins"), jointly purchased and developed several pieces of real estate, most located in Dewey Beach, Delaware. For a variety of reasons, they later sought to divest these holdings and disentangle their assets, a process that proved contentious. At the beginning of this suit, the ownership and proper dissolution of several of these joint assets remained in dispute. As the suit progressed, however, several of these issues were resolved by the parties, leaving the ownership of only one property, located on Palmer Avenue in Dewey Beach (the "Palmer Property," "Palmer," or the "Property"[1]), to be disputed at trial held on August 30, 2004 and August 31, 2004. This post-trial opinion resolves the central question of who owns the Palmer Property.

II. Factual Background

Two factors complicate the task of establishing the facts in this case and bear mention at the outset. First, because both Charles and Michelle were certified public accountants and presumably had skills in the area of financial management, Richard claims he trusted them to document the finances of their joint business endeavors. Despite these skills, Charles and Michelle did not apply the normal rigors of their day jobs to their very informal partnership with Richard. As a result, the record is devoid of the kind of useful documentary evidence that typically exists in cases involving public

[1] The "Palmer Property" is a double lot located at lots 9-11 Palmer Avenue in the community of Indian Beach.

companies or alternative entities.[2] For his part, Richard was also quite casual about his approach to the partnership and his memory is, at best, sketchy.

Second, one of the central players in this story, Ernest Malizia, Charles's father and the record purchaser of the Palmer Property, died on October 25, 1996. As a result of these and other factors (such as Michelle's non-involvement in many key events), I am forced to decide this case largely based on my impression of which of two parties with a strong incentive to be self-serving — Charles and Richard — is telling the most plausible story, using the scarce written evidence and other circumstantial evidence to help me make that judgment. That Richard chose to bring this case only in December 2002, and is basing his claim on events dating back to 1994, does not aid me.

A. The History Of The Parties' Business Dealings

Charles and Richard first went into the real estate business together in 1990 by forming Rodney Street Associates, a Delaware Corporation, and purchasing property located in Wilmington, Delaware through that entity. Later that year, they refinanced that property through a formal loan with a mortgage from Charles's father, Ernest, thus beginning what became, as we shall see, an ongoing relationship with Ernest as a financier of some of their endeavors.

On June 30, 1992, the Cousins made their second purchase together — two and a half lots in a community called North Indian Beach in Dewey Beach. The Cousins did not act through the Rodney Street Associates corporate vehicle, but took title jointly in

[2] *See* Tr. at 325-27 (noting that record keeping was not consistent with various requirements that formal accounting procedures would demand).

their individual names. This traditionally-financed purchase included two full lots, 37 and 41 Pepper Avenue, and one half lot. The 37 Pepper property had a beach house on it; 41 Pepper and the half lot were vacant.[3] The house was rented out to help cover the cost of acquiring the property and the Cousins established a joint checking account to receive this rent (and their contributions to the partnership) and to be used in paying joint costs. Although they were essentially acting as partners, the Cousins did not craft a partnership agreement — then or at any later time.

That same year, 32 and 34 Beach Avenue and an adjacent half lot known as 36 Beach Avenue became available in the same neighborhood in Dewey Beach. The Cousins wanted to obtain the half lot at 36 Beach, the other half of the half lot acquired with the Pepper Avenue properties. Because the seller would not sell 36 Beach independently, the Cousins put a $25,000 non-refundable deposit down on the two and a half lots as a block. They sought financing, but were unsuccessful. To salvage their deposit, Charles spoke to his father Ernest, who agreed to purchase 32 Beach Avenue (an empty lot) and 34 Beach Avenue (with a small house on it) for approximately $270,000, taking title with his wife, Anna. As a part of that transaction, Ernest also obtained the half lot at 36 Beach Avenue, which he sold to the Cousins as tenants in common the same day for $100, giving them the complete 36 Beach Avenue lot. During the first half of 1994, the Cousins built a house on the 36 Beach Avenue lot — a house financed, in large

[3] 37 and 41 Pepper are adjacent lots that were treated as a single large lot by the parties. All later references to 37 Pepper throughout this opinion refer to the joint lot, 37-41 Pepper.

part, by Ernest for approximately $165,000. At the conclusion of construction, in July of 1994, the Cousins signed a mortgage with Ernest for that amount.

B. The Acquisition Of The Palmer Property

Also in early 1994, the Cousins became aware of a double lot for sale at 9 and 11 Palmer Avenue, a few blocks away in the neighboring community of Indian Beach. Still looking for a property that they could develop into a beach house for their own use,[4] Richard and Charles signed a contract to purchase the Palmer Property on February 25, 1994 and made two non-refundable deposits of $1,000 and $14,000 from the joint checking account used by the Cousins for their joint property endeavors.[5] Soon after making those payments, Richard obtained a $15,000 mortgage from PNC Bank on another property in which he had an interest, and paid $15,000 into the joint account, specifically noting "Palmer Ave Lot" on the check to the joint account.[6]

After the deposit, the Cousins sought financing to consummate the Palmer purchase. The parties dispute the extent of that search, but agree that no formal application was made and no traditional financing was obtained. Instead, Charles again sought Ernest's financial support, already extended on the Rodney Street refinancing and the 36 Beach Avenue construction project.

Now we come to the crux of the factual dispute. It is undisputed that, at settlement on or about April 29, 1994, Ernest purchased the Palmer Property and took title *in his*

[4] Richard and Charles apparently foresaw continuing to rent the 37 Pepper and 36 Beach properties to defray the expenses of acquiring those properties.
[5] *See* JX 1 and JX 2 (reflecting these payments).
[6] JX 21.

own name, paying the outstanding purchase price of $138,000 and reimbursing the Cousins their $15,000 deposit. The only one of the Cousins to attend the settlement was Charles.

The issue of what the change in buyer was meant to accomplish is hotly disputed.

For his part, Richard has told two entirely contradictory stories. In an Amended Petition filed on October 15, 2003, Richard claimed that he knew the Palmer Property was titled in Ernest's name and caused it to be so titled because Ernest provided the financing. But he later disavowed this position at trial and maintained that he never knew whose name the property was titled in.[7] He then made his major argument the proposition that Ernest provided a "loan" to the Cousins to allow them to make the purchase. For their part, Charles and Michelle claim that there was no contract with Ernest, but at most an informal, non-binding family understanding that if the Cousins could later arrange their financing, Ernest would resell the property to them at a favorable price.

After considering all the evidence, I conclude that Charles's and Michelle's version of events is the more probable. There is no evidence that convinces me that the Cousins obtained any formal consideration from Charles's father Ernest other than the obvious: his taking action to ensure that the Cousins did not forfeit their $15,000 deposit. There is no convincing evidence of any specific understanding that Ernest was bound to sell the Palmer Property back to the Cousins under any particular terms or circumstances.

[7] JX 25, Amended Petition for Accounting Dissolution, Injunctive Relief and Damages at ¶ 17(C); Tr. at 109.

There is no convincing evidence that Ernest had bound himself not to sell the Palmer Property on the market or develop it for his own use if he decided that was best for him. For that matter, there is no convincing evidence that Ernest could enforce any "agreement" against the Cousins and force them to buy the property at some future date. In a real sense, this was an implicit family understanding, not an explicit, enforceable oral contract.

Richard, of course, disputes these fact findings. Although Richard did not attend the closing and never spoke to Ernest about the deal, Richard nonetheless alleges that the arrangement that Charles had reached with his father was similar to past arrangements; that is, that Ernest had lent the Cousins money at a favorable rate to enable them to proceed with their purchase. In support of this version of events, Richard claims that although Ernest reimbursed the $15,000 to the joint checking account, Richard was never told of that repayment, and continued to believe that "his" $15,000 had been used for the deposit.[8] As a co-owner of the joint checking account, it was of course in Richard's power to confirm or disprove this understanding, but there is no evidence that he ever did so, either by investigating the checking statements themselves or by asking Charles and Michelle to confirm that his assumption was correct. Put bluntly, I do not find persuasive his claim that he did know that Ernest had repaid the Cousins their $15,000 deposit for Palmer.

[8] At no point does Richard dispute that the money was actually returned to the joint account, credited to his interest, and used to pay joint expenses; he only contends that he was not informed of the repayment at the time.

Richard's strongest piece of evidence is a document written by Charles. In a summary of the construction loans from Ernest for the 36 Beach Avenue Property, Charles made notations suggesting that Ernest's purchase of Palmer was a formality reflecting an underlying loan arrangement with the Cousins. To distinguish the $15,000 returned to the joint checking account in the Palmer transaction from the 36 Beach construction loans, Charles wrote, "Note there was also a 15000 WBS check deposited into Beneficial for reimbursement of the Palmer deposit. This S/B treated as Palmer loan i.e. Rich & CAM owe Dad full purchase price of Palmer, 138 + 15 = 153."[9] As it reads, the note plainly indicates Charles's expectation that the Cousins could obtain the Palmer Avenue Property by paying Ernest the full purchase price notwithstanding Charles's testimony to the contrary. Importantly, however, the note does not specify an interest rate, payment term, or other details usually included in a loan agreement, nor is there any evidence that Ernest ever saw the document, let alone was a party to it. Nevertheless, this is the only written expression of Charles's expectation that exists.

This lack of formality contrasts sharply with the parties' other dealings relating to the refinancing of the Wilmington property and the construction loan for 36 Beach Avenue in which formal Promissory Notes and Mortgages reflecting the debt were executed by the Cousins, including Richard, in favor of Ernest. In light of this course of conduct between the parties, it is significant that no document evidencing the "loan debt"

[9] JX 20. According to Charles' testimony at trial, "WBS" represents Wilmington Brokerage, the brokerage firm that Ernest borrowed the funds from to purchase the Palmer Property, "Beneficial" was the bank where the joint checking account was located and refers to that account, and "CAM" indicates Charles Malizia (or possibly Charles and Michelle). Tr. at 213-222. Charles also indicated that "S/B" means "should be." Tr. at 16.

was ever produced with respect to the Palmer transaction. Consistent with the lack of documentation, after the purchase, Ernest (and later, his wife and Charles's mother, Anna) bore all risk of market fluctuation on the Palmer Property, paid all the taxes and other carrying costs, and reported those payments and the Palmer Property itself on their tax returns.

As important, during the period from when Ernest bought Palmer in 1994 until a later sales transaction in 1999, the Cousins made no payments to Ernest and Anna related to the Palmer Property. The absence of any payments demonstrates that there was no enforceable loan contract or expectation that Ernest was simply a title holder for convenience.

C. Richard Never Claims An Interest In The Palmer Property On His Tax Filings

Despite his claim that he believed he owned an interest in the Palmer Property from 1994 forward, Richard never reported his "interest" in the Palmer Property, or any related outstanding debt, on his tax returns. Neither did Charles or Michelle. Richard's failure to do so, like the fact that Ernest and Anna did claim that interest, strongly suggests that Richard knew that whatever interest he had in the Palmer Property was purely informal and familial rather than legal and enforceable. At the time the initial purchase was made, Richard had been involved in numerous real estate acquisitions including the Wilmington property, 37 Pepper Avenue, and 36 Beach Avenue, and his level of sophistication continued to grow through additional purchases in later years. For

him to argue that he believed that he "owned" an interest in land that he routinely failed to account for in his tax returns for nearly a decade is neither credible nor persuasive.

D. Joint Consultations With The Architect

After Ernest bought Palmer, the Cousins continued to discuss building a home on the Palmer Property once they could get sufficient funds to make that possible. As a part of this plan, Charles envisioned Richard as a partner in any potential repurchase from Ernest — the idea was that the Cousins would build a house with two master bedroom suites so both families could share the house. This intention reflected the fact they had identified the opportunity together.

Consistent with this plan, the Cousins engaged an architect during 1996 and early 1997 and paid him several thousand dollars in joint account funds to design a house for joint use to build on the Palmer Property.[10] Although Charles has maintained that he never indicated that he and Richard owned the property, the architect recalls the engagement differently, testifying that the Cousins indicated that they owned the lot.[11] The engagement of the architect itself suggests, at the least, that Charles believed that he and Richard could obtain the Palmer Property from Ernest when they could afford it on unspecified terms they expected would be reasonable, and that plans to build on the Property were therefore realistic. As to the claims of joint ownership, I find these statements characteristic of young entrepreneurs, trying to project an image of success.

[10] All plans discussed with the architect involved two separate master suites, which he understood to be one for Charles and Michelle and one for Richard. Tr. at 172-73.
[11] Tr. at 169, 173. Richard offered several other witnesses that testified to the same effect, that Charles indicated that he and Richard owned the property together.

That is, although the Cousins did not actually own the Palmer Property, they led their friends and the architect to believe that to be the case, expecting that Ernest would come through for them if they got enough capital together to buy the Palmer Property from him. Bluster of this kind is, of course, an American tradition.

E. The Death Of Ernest And The Decision To Dispose Of The Joint Properties

Several other relevant developments occurred between late 1995 and late 1998. First, in 1995 a heated dispute arose among the Cousins over whether Richard had any interest in the properties at 32 and 34 Beach Avenue. As mentioned above, these properties, like the Palmer Property, were purchased by Ernest, but Richard believed he also had an interest. Ultimately, the Cousins decided that Charles and Michelle, along with Ernest and Anna, would develop these two properties independently of Richard.[12] Although all of the Cousins acknowledge this resolution of the dispute over 32 and 34 Beach Avenue, Richard contends (without documentation) that his agreement to give up any interest that he held in 32 and 34 Beach Avenue properties hinged on an understanding that he would continue to hold an interest with Charles and Michelle in the Palmer Property. Charles does not respond to this allegation, but the timing and nature of the architect discussions tend to suggest that the Cousins intended that Richard would be involved in any ultimate construction on the Palmer Property, if it occurred.

[12] Charles and Michelle contracted to buy 32 Beach Avenue from Ernest and Anna, and built a house on it (with financing from Ernest and Anna). Ultimately, Charles and Michelle took title from Anna in June 1997, after Ernest's death.

Second, on October 25, 1996, Ernest died intestate. Upon his death, his wife Anna took title to a life estate in the Palmer Property, which had been titled in his name only, and continued to pay taxes and carrying costs on the property, as well as include her ownership of the Property on her tax returns.[13] As indicated, the Cousins made no payments to her to defray her costs of owning Palmer.

Third, by 1997 the Cousins began to see a joint summer home as less desirable, although they continued to discuss building on the Palmer Property. By then, Richard was living at the beach year round, so another summer beach home made less sense for him. Also, Charles and Michelle were raising three children while Richard remained single, thus presenting a potentially incompatible difference in lifestyles. This combined with the Cousins' more strained relationship to make their original vision for the Palmer Property less appealing to each of them.

Finally, Richard and Charles were sued in August 1997 by other homeowners in North Indian Beach regarding 37 Pepper Avenue. As a result, the Cousins decided to sell the properties in North Indian Beach. Accordingly, 37 Pepper Avenue, 36 Beach Avenue, and 32 Beach Avenue were all listed for sale in October of 1998.[14] 32 Beach

[13] All parties involved believed that Anna had been listed as a co-owner with Ernest on the title for the Palmer Property when he purchased it in 1994, as she had been on the titles for 32 and 34 Beach, and that she had therefore acquired fee simple title to the Property. The difference in titling, and its consequences, were not discovered, as described in more detail below, until Charles and Michelle purchased the property in 1999.

[14] When Ernest died, the jointly held title to 34 and 32 Beach passed to his wife, Anna. Anna completed the sale of 32 Beach to Charles and Michelle in June of 1997. Thus, at the time that the Cousins decided to divest their holdings in North Indian Beach, they owned three properties there — 37 Pepper and 36 Beach, owned by Charles, Michelle and Richard, and 32 Beach, owned by Charles and Michelle, without Richard. Anna Malizia presumably continued to hold

Avenue sold April 23, 1999, 36 Beach sold on May 27, 1999, and when no third-party buyer emerged by November, Charles and Michelle purchased Richard's interest in 37 Pepper on November 22, 1999. These sales effectively ended the Cousins' joint business efforts in real estate development, leaving only their inchoate expectations regarding the Palmer Property in Indian Beach unresolved.

F. Disposition Of The Palmer Property

After the sale of 32 and 36 Beach, the Cousins finally had the financial wherewithal to formally purchase and build on the Palmer Property. The timing of these sales and corresponding purchases is instructive because both parties sought to take advantage of a so-called "like-kind" or "tax-free 1031" exchange (hereinafter, "§ 1031 exchange") which defers the tax on profits made for a sale of real estate if the sale's proceeds are reinvested in another property consistent with certain requirements set forth in § 1031 of the Internal Revenue Code.[15] There are two operative deadlines for a § 1031 exchange: 1) the new property to be purchased must be identified within 45 days of the sale of the original property and 2) the new purchase must be closed within 180 days of the sale of the original property.[16]

1. Potential § 1031 Exchanges Are Discussed

The Property at 36 Beach Avenue sold on May 27, 1999, giving both Charles and Michelle (as a couple) and Richard (individually) approximately $150,000 each in

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title to 34 Beach Avenue, and nothing in the record suggests that Anna has ever sold the property at 34 Beach.

[15] I.R.C. § 1031.

[16] I.R.C. § 1031(a)(3).

profits, sufficient funds to make an offer to purchase and build on Palmer, a possibility they discussed at that time, with Charles drawing up an amortization schedule to facilitate the discussion.[17] Richard suggests that these discussions happened much later, in November of 1999. But it was when the 36 Beach sale occurred in May, 1999 that the parties had the money to act, and, under § 1031, needed to designate their target properties. Therefore, I find Charles's testimony on this key point contextually more credible, and conclude that these discussions took place in or about May of 1999.[18]

The amortization schedule, based on a 9.75% interest rate, showed what it might cost to obtain the Palmer Property from Anna, approximately $250,000 as of that time. Richard claims that he objected to the schedule on several grounds, including that the interest rate appeared too high (a claim that might be true) and that the schedule did not include the $15,000 that he had specifically paid into the joint account for Palmer at the time (a claim that I find not credible).

Richard also implausibly claims to have been under the impression that money had been regularly going to Ernest (and later Anna) on this "Palmer loan" out of the joint account. Charles, who with Michelle handled the money in the Cousins' joint account,

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[17] JX 9.

[18] Richard's claim that he was not shown the amortization schedule until November is also less plausible because this would have been after Charles and Michelle had already acquired the property in October 1999 for $500,000, substantially more than the amortization schedule, JX 9, would suggest. Notably, Richard himself testified under oath in his deposition that he was shown the amortization schedule about the time 36 Beach was sold, but at trial he claimed, unpersuasively, that he was "mistaken" about the timing when he made his sworn deposition testimony. For these additional reasons, among others, I conclude that Richard was shown the amortization schedule in May of 1999, about the time that 36 Beach was sold. By Richard's own admission, Charles did speak to him, and show him the amortization schedule at some point, and the timing makes much more sense if the conversation occurred when Charles said it did.

clarified that money had been paid to Ernest, but on the Mortgage for 36 Beach Avenue; nothing had been paid toward the Palmer Property. I find Richard's claim that he thought the Cousins were paying on both properties entirely unconvincing. Richard cannot reasonably contend he thought the Cousins were making regular payments on loans to Ernest totaling $318,000 ($153,000 for Palmer and $165,000 for the construction on 36 Beach), when there is no evidence that the rents they were collecting were near adequate for that purpose. Some degree of ignorance about important financial matters is plausible, but not to this extent, especially when it contradicts Richard's sworn tax filings that disclaimed any interest in Palmer.

According to Charles, Richard refused to go forward with and participate in buying the Palmer Property, noting that he lived at the beach already, that he was single while Charles and Michelle were raising a family, and that a joint beach home was no longer attractive to him. Shortly after these alleged discussions, on June 29, 1999, Richard acquired the The Bluewater House, a bed and breakfast in Lewes, in a § 1031 exchange with the money he had acquired from the 36 Beach Avenue sale. In so doing, Richard clearly indicated that he did not wish to buy the Palmer Property or participate in building jointly on it at that time.

Charles, however, just as clearly chose, at about that time, to purchase the Palmer Property himself (with Michelle) and identified the property as the target property in a § 1031 exchange with the proceeds of 32 Beach Avenue. Because 32 Beach had been sold on April 23, 1999, Charles must have identified his target, Palmer, by early June 1999 at the latest, to comply with the 45 day rule under I.R.C. § 1031(a)(3)(A). Although

I find that Charles invited Richard to participate in the opportunity to buy the Palmer Property, there is no evidence that Richard was specifically informed of Charles's and Michelle's intention to proceed without him. Nonetheless, that intention should have been obvious to Richard and his claims of surprise are not persuasive.

2. Charles And Michelle Purchase The Palmer Property From Anna

On October 20, 1999, Anna sold the Palmer Property to Charles and Michelle for $500,000, a price that they agreed, without any formal appraisal, was a fair market value. Michelle had worked in a real estate office for a number of years and testified that similar properties were selling for about that price in 1999.[19] The proceeds from 32 Beach were insufficient to cover the entire purchase price. Charles and Michelle paid approximately $164,000 at the time of the purchase, signing a note to Anna for the approximately $336,000 remaining, at a rate of 7.25%.

Near closing, some meticulous soul realized that, unlike the 32 and 34 Beach properties, the Palmer Property had been titled in Ernest's name alone. The consequences of this minor discrepancy were important. Because the Property was titled solely in Ernest's name, Anna had only received a life estate in the Property, with Charles and his two siblings holding a joint remainder interest. As a consequence, Charles was not permitted to purchase the property as a § 1031 exchange because 1) he already owned an interest in the property — a condition that precludes a § 1031 exchange under the rule, and 2) more to the point, Anna did not have a fee simple interest in the property to sell.

[19] Tr. at 304.

Because the Property had already been identified under the 45 day rule and the 180 days had almost expired, Charles's options were limited. Charles convinced his siblings to join him in quitclaiming their interests in the property to their mother Anna. This reconsolidated all interests in the Palmer Property in Anna, and allowed the sale to proceed as a § 1031 exchange.

The note signed by Charles and Michelle to Anna was due in full on June 30, 2000. No payments have ever been made on the note, which is now overdue by more than four years. Charles acknowledges that the note is currently worth approximately $450,000; however, Anna has never demanded payment or indicated her intention to do so.[20] From the record, it now appears that Charles's siblings will likely expect Charles and Michelle to pay off the outstanding note, in view of this litigation and other intra-familial considerations, including that Charles's and Michelle's relationship has deteriorated into divorce proceedings and therefore they will likely not be using the Property for a summer home.

3. Richard Learns Of The Sale Of The Palmer Property

Charles and Michelle closed on the Palmer Property approximately one month before they acquired Richard's interest in 37 Beach Avenue and Richard contends that he believed that they intended to buy his interest in Palmer at that time as well. Richard claims to have been shocked to read in the newspaper in February 2000 that Charles and Michelle had purchased the Palmer Property. According to Richard, he angrily contacted

[20] Tr. at 254-55.

Charles, who reportedly replied, "[i]f you still want to build, you're in. If you are not, you are out."[21]

By that time, Richard had no desire to build with Charles and Michelle; he simply wanted to sell Palmer and get half the value. He therefore did not accept Charles's offer. As was noted, Charles's and Michelle's marriage eventually disintegrated, leaving them naturally more interested in selling Palmer than in building on it. One senses (but cannot be sure) that Richard's motivation in deciding to sue in December 2002 was at least partly fueled by that change in circumstance, believing himself at that point to have been left out — not of a joint beach house he had no interest in using — but of an opportunity for quick financial gain.

III. Legal Analysis

The chain of legal title for the Palmer Property is clear. It was purchased by Ernest Malizia in April 1994 and titled in his name. When Ernest died intestate in October 1996, a life estate in the property passed to Anna and a remainder interest passed to each of Ernest's three children. To facilitate a § 1031 purchase of the Property by Charles and Michelle in October 1999, each of the children, including Charles, quitclaimed their rights in the property to Anna, who then sold the property to Charles and Michelle.

At no prior point did the Cousins collectively or any of them individually ever have legal title to the Palmer Property. Lacking a cognizable legal claim to the Palmer Property, Richard nonetheless contends that the facts support a finding that he has an

[21] Tr. at 96.

equitable interest in the Property under the doctrines of resulting and constructive trust. For reasons discussed below, I find that Richard's claims are not supported by the facts, and therefore find for defendants, Charles and Michelle Malizia.

A. The Structure For Considering Richard's Claims

Richard alleges that he had equitable title to the Palmer Property and is entitled to have that interest protected under the doctrines of resulting or constructive trust — two doctrines that provide equitable exceptions to legal transfer of title to protect against unjust enrichment. A resulting trust gives effect to the intention of the parties, as evidenced by the circumstances surrounding the transaction, where it appears that the beneficial interest was not intended to follow the legal title.[22] In contrast, a constructive trust does not hinge on the intent of the parties, but rather on a finding of fraud, violation of fiduciary duty, or some other unconscionable act by one of the parties that requires equitable intervention to prevent unjust enrichment.[23] Because each of these doctrines operates as an exception to the normal requirement that interests in land be established by a writing meeting the statute of frauds, Richard as plaintiff has the burden to prove a resulting or constructive trust by clear and convincing evidence.[24] Because the doctrines of resulting and constructive trust are conceptually distinct, however, they require separate examination.

[22] *Adams v. Jankouskas*, 452 A.2d 148, 152 (Del. 1982); *Hudak v. Procek*, 727 A.2d 841, 843 (Del. 1999); *see generally* Donald J. Wolfe, Jr. & Michael A. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery*, § 12-7[c], 12-87 (Release No. 5, Feb. 2004). A resulting trust is often used, as Richard attempts to use it here, when one party provides the money to purchase property that, for some incidental reason, is held in the name of another.

[23] *Adams*, 452 A.2d at 152.

[24] *E.g., Greenly v. Greenly*, 49 A.2d 126, 129 (Del. Ch. 1946).

In performing that segmented analysis, it is also critical to bear in mind certain predicate considerations. For starters, it is necessary to separate Richard's claim that he acquired equitable title in the Palmer Property at the time Ernest bought it in 1994, from his claim that Charles and Michelle did him wrong at the time they purchased from Anna in 1999. Any claim by Richard that he took equitable title when Ernest first purchased is, by necessity, derivative of his interest in the informal partnership he had with Charles and Michelle.[25] Whatever equitable interest Richard obtained in the Palmer Property when Ernest purchased was shared jointly with Charles and Michelle and was not individual to him. As to Richard's claim that the Cousins possessed an equitable claim to Palmer from the date of Ernest's purchase, it is therefore critical to determine whether the Cousins as a joint entity would have been able to prove such a claim against Ernest (or his successor in title, Anna).

For purposes of clarity, I therefore begin by examining whether the Cousins had an equitable interest in the Palmer Property under the doctrine of resulting trust as of the time of Ernest's purchase in 1994. I then consider whether the Cousins had an equitable interesting in Palmer under the doctrine of constructive trust as of that same time. Only after doing that do I consider whether Richard, individually, possesses an equitable interest in Palmer as a result of the conduct of Charles and Michelle in purchasing Palmer

[25] Not only did the Cousins hold the right to purchase Palmer jointly based on the contract, but the initial deposit came, not from Richard, but from the Cousins' joint funds, which he later reimbursed to the joint account as one of several people making contributions to that account. *See* JX 1 and JX 2 (reflecting the initial $1000 payment (check number 1216) and the following $14,000 payment (check number 1227)); Tr. at 20-21. Where the purchase price has been paid out of partnership or community assets "the trust 'results' in favor of the partnership or the community." *Adams*, 452 A.2d at 152 (citing Bogert, *The Law of Trusts and Trustees* § 454, p.630 (rev. 2nd ed. 1977)).

for themselves, from Anna in 1999, without Richard's participation and without paying him any consideration.

1. No Resulting Trust Vested Equitable Title In The Cousins At The Time Ernest Bought The Palmer Property

A resulting trust is designed to vindicate the true intentions of the parties to a real estate transaction when the court can conclude, based on clear and convincing evidence, that the parties intended that equitable ownership of the property rest in someone other than the holder of record.[26] A resulting trust is often proven by demonstrating that the equitable claimant was the party that actually put up the purchase money. Where one person pays the purchase price and another holds title, the law presumes that the person who pays the price intends to retain beneficial ownership of a property.[27] A quintessential example of a case ripe for resulting trust is therefore where parents of a married couple take legal title to a residential property, being creditworthy themselves, but the actual costs of the down payment and later loan and tax payments are made by the couple.[28]

Here, of course, Richard claims that something very similar happened and that Ernest was merely a title holder of convenience with the true ownership interest in Palmer resting in the Cousins. There are many deficiencies in this claim, however. As a

[26] *See Hudak v. Procek*, 806 A.2d 140, 146-47 (Del. 2002); *Adams*, 452 A.2d at 152; *Greenly*, 49 A.2d at 129.
[27] *See Adams*, 452 A.2d at 152.
[28] This example differs from the example discussed in *Hudak* where the parents put up the purchase money, but the law, in an exception to the exception, will presume a gift to the child or children who take legal title. *See Hudak* 806 A.2d at 146-47; *see also Hudak v. Procek*, 727 A.2d 841, 843 (Del. 1999) (discussing the same principle in an earlier decision in the same case). Both scenarios differ from the facts here, where the parent, Ernest, both put up the purchase money *and* took legal title.

starting point, it is important to remember that equitable exceptions to legal ownership in real estate should not be lightly invoked, lest the useful reliability and clarity generated by the statute of frauds, the recording of ownership interests, and other commercially sensible requirements be undermined. That is the reason for the high evidentiary burden Richard must meet.

Furthermore, I must look to the intention of all the parties involved in the transaction, especially Ernest. Although Richard makes much of his own subjective intentions, a resulting trust looks to the intentions of all parties involved in the transaction.[29] Charles and Michelle testified that their intention was to repurchase the property from Ernest at some later point, at an attractive price, based on an informal familial understanding with Ernest. At the very least, this muddies any intention that the Cousins might have held collectively. More crucially, Richard has offered no evidence whatsoever of Ernest's intentions, specifically denying having ever spoken to him about the financing for the Palmer Property.[30] By failing to address Ernest's intentions, Richard hampers himself in meeting his substantial burden of proof. A resulting trust, by definition, exists to vindicate the clear intent of the parties when strict adherence to legal formalities would interfere with that intent — such a claim therefore cannot be properly accepted without a convincing demonstration of the underlying intent of the parties.

[29] *Hudak v. Procek*, 806 A.2d 140, 147 (Del. 2002) (stating that a resulting trust ensures "that legal formalities do not frustrate the original intent of the transacting *parties*.") (emphasis added); *Adams*, 452 A.2d at 152 ("A resulting trust arises from the presumed intention of the *parties* . . .) (emphasis added); *see also Blue Rock Liquors, Inc. v. Reilly*, 1994 WL 698622 (Del. Ch. Nov. 28, 1994) (looking to the intent of both parties to a contract in establishing the appropriate amount of remedy after finding a resulting trust).

[30] Tr. at 105 ("I never once — and I'm not kidding — once ever talked to my Uncle [Ernest] about any of these properties, as far as financing. Once.").

Of course, one way to demonstrate intent is by pointing to relevant evidence of commercial conduct among the parties that supports a clear inference that the parties intended a split between equitable and legal title. Here, no circumstantial evidence of this kind exists. Nothing in the record convinces me that Ernest bound himself contractually to sell Palmer to the Cousins, at any price or at any time, or that Ernest restricted himself from selling Palmer on the market if he believed it necessary, or even desirable. Unlike an ordinary resulting trust case, none of the Cousins put any money into Palmer. The $15,000 down payment that they faced forfeiting was fully restored to them by Ernest on the day he purchased Palmer. At no later time did the Cousins pay Ernest even a nickel on Palmer, a failure of proof that is incredibly important in a resulting trust case because it is usually the evidence of specific financial payments (in other words, of partial performance or course of dealing) from which the court can infer that equitable title vested in other than the record holder and the nature of that equitable interest. In the absence of any payments at all, much less any terms, it would be rash to invoke a narrow exception to the statute of frauds to award Richard (through the Cousins) an interest in land unsupported by any written contract.[31]

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[31] Charles and Michelle hard press the statute of frauds argument, and not without some merit. Delaware's statute of frauds has evolved specifically to provide a degree of certainty in situations like this and states, in relevant part:

> No action shall be brought to charge any person . . . upon any contract or sale of lands . . . unless the contract is reduced to writing, or some memorandum, or notes thereof, are signed by the party to be charged therewith . . . .

6 *Del. C.* § 2714. It is well settled that the purpose of the statute is both to prevent fraud and reciprocally to promote certainty as to the existence of the contract and its terms, especially in land transactions. *E.g.*, *Last Will and Testament of Puwalski v. Bloch*, 1996 WL 73571, at *4 (Del. Ch. Feb. 9, 1996) (citing *Quillen v. Sayers*, 482 A.2d 744, 747 (Del. 1984)); *Durand v. Snedeker*, 177 A.2d 649, 651 (Del. Ch. 1962). Concern with certainty informs both the

Further to this point, it is relevant in equity that Ernest (and later Anna) bore all the costs and risks of ownership. Not one shred of reliable evidence indicates that the Cousins were bound to pay Ernest anything at anytime on Palmer — a revealing contrast with the prior transactions like the Rodney Street refinancing and the construction loan for 36 Beach in which a formal document had evidenced the obligations owed to Ernest by the Cousins. At best, the Cousins could draw on Ernest's love of family to convince him, at a later point, to sell them Palmer, not as a contractual obligation, but as an entirely discretionary act of familial loyalty and love. Converting Ernest's willingness to take economic risk to bail out the Cousins from losing a down payment into a binding commitment by him sufficient to vest equitable title in the Cousins, in exchange for no binding obligation on their part to repay him his costs of purchase and carry plus any

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application of the statute itself and the exceptions that courts have come to accept in lieu of a written contract, such as the exceptions for constructive or resulting trust that Richard seeks to have applied here. Charles and Michelle concede that constructive and resulting trusts operate as equitable exceptions to, and therefore are not barred by, the statute. *Adams v. Jankouskas*, 452 A.2d 148, 157 (Del. 1982); Def. Op. Br. at 20. But they draw a distinction and insist that any claim "akin to an option contract" must bound and precluded by the statute. Def. Op. Br. at 20.

But contract claims, even oral ones for land, may, in extremely limited circumstances, exist as exceptions to the statute of frauds. Richard's claim for a purchase money resulting trust invokes the specific application of a related exception to the statute of frauds, the exception of part performance. Partial performance, including partial payment of a purchase price, may remove an oral agreement from the operation of the statute of frauds "on the theory that acts of performance constitute substantial evidence of a contract." *Durand v. Snedeker*, 177 A.2d 649, 651 (Del. Ch. 1962); *see also Hamilton v. Traub*, 51 A.2d 581, 583 (Del. Ch.1947) (holding that a $300 payment could remove an oral agreement for sale of land from the statute of frauds). Even under this exception, however, substantial evidence must ultimately be produced to convince the court that the part performance in fact evinces the alleged contract with a high degree of certainty. *Durand v. Snedeker*, 177 A.2d 649, 651 (Del. Ch. 1962) (noting that "the existence and terms of the contract sought to be enforced [must be] established by that high degree of proof which has been variously categorized by the terms 'clear,' 'clear and convincing,' 'clear and satisfactory' or other equivalent expression.") (citations omitted). Rather than rely on the statute of frauds as barring Richard's claims, I simply find that Richard has failed to prove any exception to the statute.

specific rate of interest at any time, would, in itself, be inequitable and be unfaithful to the requirement that equitable exceptions to legal ownership be sparingly and responsibly recognized. Ernest (and Anna) bore all the risk and received no promises or payments in return, a circumstance that could not be more alien to a determination that others have an equitable claim on the Property.

In this regard, it bears special mention and repetition that Richard had many years to claim an ownership interest in Palmer in his filings with tax authorities. He never did, and now makes a factual claim specifically contradicting documents he filed under penalty of criminal liability. To demonstrate his entitlement to a resulting trust, Richard has the burden of persuasion to demonstrate by clear and convincing evidence that the parties to the transaction in which Ernest took title intended to have equitable title rest in hands other than Ernest's. He has failed in that endeavor.

2. No Constructive Trust Arose In Favor Of The Cousins When Ernest Purchased The Palmer Property

Richard's claim that the doctrine of constructive trust aids him in claiming that the Cousins took equitable title when Ernest purchased the Palmer Property is, if anything, more strained then his claim for a resulting trust. Like the doctrine of resulting trust, the constructive trust doctrine operates to prevent unjust enrichment. Unlike the resulting trust doctrine which exists to vindicate the actual intentions of the transacting parties, the imposition of a constructive trust is premised on a finding of fraud, violation of fiduciary

duty, or some other unconscionable act.[32] In other words, a claim for a constructive trust is a demand for an equitable remedy, and does not necessarily involve a distinctly equitable claim.

For reasons that have already been stated, there is no basis to conclude that Ernest committed any inequitable act towards the Cousins. To the contrary, he bailed the Cousins out of a possible loss of $15,000, and appears to have held open the prospect that he would consider (as a matter of discretion based on familial loyalty) selling them Palmer if they got their act together, though he did not impose upon them any responsibility in the meantime to make payments to him or to take the Property off his hands if he wished to dispose of it. Ernest took all the risk, the Cousins had no skin in the game, and Richard's claim that a constructive trust arose when Ernest purchased Palmer is wholly lacking in merit.

3. No Constructive Trust Arose In Favor Of Richard When Charles And Michelle Purchased The Palmer Property From Anna In 1999

The most plausible of Richard's theories is not one that he entirely crystallized in his papers. This theory is that a constructive trust arose in his favor as to the Palmer Property at the time that Charles and Michelle purchased the Property from Anna in 1999. In this variation, Richard claims that he has the right to a half-interest in Palmer, subject to his obligation to bear half the burden of the contract with Anna.

[32] *Adams*, 452 A.2d at 152; Donald J. Wolfe, Jr. & Michael A. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery*, § 12-7[b], 12-78 (Release No. 5, Feb. 2004).

This theory is at least minimally plausible because it is possible to conceive of the relations among the Cousins as to Palmer as that of fiduciaries, involved in a loose partnership[33] regarding their beach properties generally or, more discretely, a joint venture[34] to build a beach house on the Palmer Property.[35] The Cousins identified the

[33] *See* 6 *Del. C.* § 15-202(a); 6 *Del. C.* § 1507; *Chaiken v. Employment Security Commission*, 274 A.2d 707, 710 (Del. Super. 1971) (weighing a variety of factors including the essential sharing of profit in declining to find a partnership); *Garber v. Whittaker*, 174 A. 34, 36 (Del. Super. 1934) (requiring partnerships to involve a sharing of losses, as well as profits); *see also Burrus v. Fraser*, 1988 WL 90561 (Del. Super. 1988) (construing a partnership at will where there is no written agreement, the partnership did not exist for a single purpose, and there was no time specified for the duration of the relationship).

[34] A joint venture may be established based on the facts and circumstances surrounding the parties' interactions where the parties share 1) a common interest in the performance of a common purpose; 2) joint control or right of control; 3) joint proprietary interest in the subject matter; 4) the right to share in the profits; and 5) the duty to share in the losses that may be sustained. *Warren v. Goldfinger Brothers, Inc.*, 414 A.2d 507, 509 (Del. 1980) (listing the five factors to be considered) (citations omitted); *J. Leo Johnson, Inc. v. Cramer*, 156 A.2d 499, 502 (Del. 1959) (holding the relationship between the parties "may be implied or proven by facts or circumstances showing that such enterprise was in fact entered into"); *Thomas v. King*, 95 A.2d 822, 826 (Del. Ch. 1953) (looking to the "cumulative effect of the more substantial facts" to establish a joint venture or partnership); s*ee also Wah Chang Smelting and Refining Co. of America v. Cleveland Tungsten Inc.*, 1996 WL 487941, at *3-4 (discussing the evolution of the joint venture concept).

[35] Charles and Michelle have alleged, by way of a counterclaim, that if a partnership is found, that they are entitled, as partners, to 50% of the profits from Richard's other purchases since 1990, such as his purchase of The Bluewater House Bed and Breakfast in a § 1031 exchange in 1999. This counterclaim was not pressed at trial in any reasonable way and I address it here only for completeness. I find the counterclaim to lack merit.

The fact that the Cousins had a loose partnership or joint venture did not mean that they had agreed to present every real estate opportunity to each other. There was, as a factual matter, no reasonable expectancy among the Cousins that all real estate opportunities that came to any of them individually had to be presented to the Cousins as a collective group. *Cf. Guth v. Loft*, 5 A.2d 503 (Del. 1939) (listing reasonable expectancy as a factor in distinguishing corporate opportunities); *U.S. West, Inc. v. Time Warner Inc.*, 1996 WL 307445, at *22-23 (Del. Ch. June 6, 1996) (stating that the principles of *Guth* apply by analogy to partnership opportunities). Here, although the Cousins conducted themselves very informally, the outer boundaries of the properties towards which they directed their joint interest were clearly delineated. Those properties included residential properties, like Palmer, but did not include purchasing a bed and breakfast such as The Bluewater House. Richard's other purchases also occurred much later then the joint purchases — by the time that Richard bought the Bluewater House, the Cousins were far along in unwinding their joint affairs and Charles and Michelle had already cut Richard

Palmer Property as an attractive one together, even undertaking jointly to sign a sales contract, though Ernest relieved them of this obligation. Even after that occurred, the Cousins clearly viewed Palmer as part of their mutual ventures in real estate in the Dewey Beach area, jointly commissioning costly architectural work to design a house that they would all occupy, if and when they obtained the resources to buy Palmer and build on it.

In other words, one can plausibly conceive of the Cousins as partners or joint venturers, viewing Palmer as an opportunity that belonged to them jointly — i.e., as akin to a "corporate opportunity" in the context of a business corporation.[36] This assumed conception is importantly distinct from the Cousins' possession of any binding rights against either Ernest or Anna. Rather, it consists only of the idea that *if* Ernest or Anna were willing, voluntarily and not as a legal obligation, to convey Palmer to Charles and Michelle, then Charles and Michelle would be required to include Richard in that opportunity on a co-equal basis. Having worked together to identify the Property and to invest in architectural fees, the Cousins, as fiduciaries to each other, were arguably duty-

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out of their investments in 32 and 34 Beach. Charles and Michelle clearly brought this counterclaim as a defensive reflex involving the idea that if Richard was their partner for purposes of Palmer than they must have been his partners for purposes of The BlueWater House. But the properties are clearly distinct because the Cousins had agreed (e.g., through jointly procuring architectural services) to pursue the possibility of building a house for shared use on the Palmer Property. Charles and Michelle had no such reasonable understanding as to the Bluewater House or any other properties not discussed in this opinion. Indeed, they had absolutely no desire to enter new investments with Richard as of 1999, and offered him the chance to invest in Palmer only because they felt obliged to do so, given their joint efforts to develop that opportunity.

[36] *See U.S. West, Inc. v. Time Warner Inc.*, 1996 WL 307445, at *22 (Del. Ch. June 6, 1996) (holding that "the principles of fiduciary loyalty upon which the 'corporate opportunity' doctrine was erected apply analogously to partnership fiduciaries").

bound in equity to address the Property jointly, and no one (or two) of them could exploit the opportunity independently.

Given the family relations involved, Richard can claim also to have been more vulnerable than Charles (or even Michelle) than vice versa. After all, it was Charles's parents who held the Palmer Property. Charles's fidelity to Richard in drawing on Ernest's (and later, more critically) Anna's affection was vital for Richard, as Richard was only a nephew, and one who, by his own admission, did not directly discuss the joint business endeavors with his Aunt Anna and Uncle Ernest.

In view of the overall course of dealing among the Cousins as to the Dewey Beach properties and of their familial relations, it is therefore at least plausible to posit that Charles and Michelle owed Richard a fiduciary duty to allow him to participate on equal terms with them in any sales transaction with Anna that was designed to implement their prior shared intent to build a beach house for joint use on the Property. There are, of course, substantial questions that arise about the prudence of indulging even this limited assumption. To indulge an assumption like this in Richard's favor and make it the basis for a judgment in his favor would create policy problems. To enforce, in the guise of a partnership opportunity, an informal familial expectation to buy land (and, in doing so, elevate that informal expectation to an enforceable equitable right) would seem to go far towards undermining the sound policies undergirding the statute of frauds. It seems to me to be a reasonable expectation that those who wish to deal in land, and in fact those who wish to engage in informal partnerships to purchase land, even if they are related by blood, conduct their affairs in accordance with minimal standards of commercial

reasonableness, which require that important understandings be formalized by some sort of writing, or at the very least, by convincing evidence of a pattern of performance that demonstrates the material terms of their mutual obligations. At best, what I have here is evidence that Charles and Michelle viewed themselves as having an obligation to Richard, arising out of their overall real estate dealings with him and their specific discussions regarding Palmer, to include him in any deal they might strike with Ernest or Anna. Notably, on this record one cannot conclude that any stronger obligation existed; the only possible fiduciary obligation was a requirement to offer Richard the opportunity to participate co-equally in the purchase of Palmer for the specific purpose of building a house there for the Cousins' shared use.

In analogizing these facts to a case of usurped corporate opportunity, I assume, purely for the sake of argument, that Charles and Michelle owed a fiduciary duty to Richard to include him in whatever "opportunity" there was to convince Anna to sell Palmer. I indulge this assumption — that the Cousins were in a fiduciary relationship and that the usurpation of the joint opportunity represented by the informal understanding, by one or more Cousins to the detriment of another, might form the basis for a breach of a fiduciary duty — solely for the sake of rendering as definitive a decision as possible to resolve the dispute among the Cousins. Why do I say this? Because even assuming that Charles had a binding duty to offer Richard the opportunity to participate in the purchase of Palmer from his mother, I conclude that Charles and Michelle lived up to that duty and, thus, that Richard's claim fails, even with the benefit of an assumption that a fiduciary duty to share that opportunity existed.

Of course, the doctrine of corporate opportunity that I apply by analogy comes down to us from the venerable case of *Guth v. Loft*,[37] which describes a corporate opportunity as follows:

> [I]f there is presented to a corporate officer or director a business opportunity which the corporation is financially able to undertake, is, from its nature, in the line of the corporation's business and is of practical advantage to it, is one in which the corporation has an interest or a reasonable expectancy, and, by embracing the opportunity, the self-interest of the officer or director will be brought in conflict with that of his corporation, the law will not permit him to seize the opportunity for himself.[38]

In *Johnson v. Greene*,[39] the court summarized this analysis succinctly as determining "[w]hether or not the [fiduciary] has appropriated for himself something that in fairness should belong [to those he owes his duties]."[40] Here, the Cousins — whether conceived as partners, joint venturers, or both — were flush with the funds from the sale of 36 Beach Avenue as of May 1999. At that time, 1) they were in a financial position to capitalize on the opportunity to purchase the Palmer Property that they had long jointly considered and pursued; 2) such a purchase was in the line of their joint endeavors; and 3) the Cousins, collectively, had a reasonable expectancy (in fact one that they had often explicitly discussed) in jointly realizing the opportunity. The critical question therefore becomes, under the assumption I am indulging, whether Charles and Michelle breached

[37] 5 A.2d 503 (Del. 1939).
[38] *Id.* at 511; *see also Broz v. Cellular Information Systems, Inc.*, 673 A.2d 148, 155 (Del. 1996) (reiterating the "well established" factors articulated in *Guth*).
[39] 121 A.2d 919 (Del. 1956).
[40] *Id.* at 923.

their fiduciary duties by entering into a sales transaction for Palmer with Anna without including Richard.

I find that the answer to that question is no. Under *Guth* and its progeny, Charles and Michelle were permitted to pursue the opportunity to buy Palmer so long as they fairly offered Richard the chance to participate. As I discussed earlier in this opinion, I conclude that Charles discharged that obligation in the Spring of 1999 by specifically discussing the chance to buy Palmer in a § 1031 exchange at that time. Even later, Charles again gave Richard the chance to join in and to work together to build a beach house there. For his own reasons, Richard did not wish to participate in the Palmer opportunity at that time. He had no further interest in sharing a beach house with Charles and Michelle and wished to deploy his resources elsewhere, in a bed and breakfast in Lewes. Having presented Richard with the chance to take advantage of the opportunity to buy Palmer, Charles and Michelle were thereafter free to avail themselves of that opportunity in their individual capacities.[41] Having failed to prove that Charles and Michelle breached any fiduciary duty to him at the time they purchased the Palmer Property from Anna, Richard's claim for a constructive trust therefore fails.

It also bears mentioning that this outcome does not work any inequity upon Richard's reasonable expectations. There is no evidence that the Cousins ever eyed Palmer as a real estate deal in which they would, by selling that Property, get rich. They viewed it as the Property on which they wished to build their joint summer home.

[41] *See Broz*, 673 A.2d at 157 (noting that in the corporate context, presentment to the full board of directors "creates a kind of 'safe harbor' for the [fiduciary]").

Richard, of course, now sees Charles and Michelle as the recipients of a windfall at his expense because they will probably be able to sell Palmer at a healthy profit, even assuming that they pay off the note they owe Anna. But the fact that Charles and Michelle are now divorcing and will likely sell the Property is an after-the-fact development that does not obviate the reality that they offered Richard the chance to participate and that they paid Anna a $164,000 down payment, owe her on a substantial note, and have been paying all the taxes and other costs on the Property since they bought it.

B. Alternatively, Richard's Claims Are Time-Barred By The Doctrine Of Laches

Although Ernest bought Palmer in 1994 and Charles and Michelle offered Richard the opportunity to participate in purchasing Palmer in the Spring of 1999, Richard did not bring this action until December, 2002. In view of this delay, Charles and Michelle have asserted a laches defense, which I now conclude, after considering the trial evidence, to be meritorious and to provide an additional justification for dismissing Richard's claims.

The doctrine of laches protects defendants from prejudice by prohibiting the unreasonably slow filing of equitable claims.[42] Laches fulfills a similar function to the legal concept of a statute of limitations, but operates more flexibly. Incorporating the concept of "unreasonable" delay, laches seeks to equitably balance the factual

[42] *See Wright v. Scotton*, 121 A. 69, 72 (Del. 1923) ("[E]quity will generally refuse its aid to stale demands."); 27A Am. Jur. 2d *Equity* § 141.

circumstances of each case.[43] To sustain a laches defense, a defendant must show that it was prejudiced because the plaintiff unreasonably delayed bringing suit after being on at least inquiry notice of its claims.[44]

Charles and Michelle, who have paid the carrying costs and taxes on the Palmer Property since acquiring it in 1999 and borne the economic risk associated with ownership, have suffered cognizable prejudice as a result of the delay of the resolution of this suit. Richard used time as an option here, leaving Charles and Michelle with downside risk and reserving to himself the right to leisurely present a claim of ownership that would cloud their title. This delay has also no doubt complicated the already difficult process of divorce by rendering Charles and Michelle unable to premise an overall settlement on an equal division of Palmer between them. Furthermore, Richard's tardiness caused substantial evidentiary uncertainties, particularly as to his claim that he (as one of the Cousins) acquired equitable title to Palmer in 1994 — some eight years before suit. The most obvious example of this is the absence of Ernest's testimony.

In view of the obvious prejudice resulting from Richard's torpor, the operative questions therefore become: when did Richard have inquiry notice of the wrongs he claims were done to him, and did he act with sufficient promptness after that time? Under the most charitable of assumptions, Richard was on inquiry notice of his claims no later than the Spring of 1999 after Charles presented him with a proposed amortization

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[43] *Federal United Corp. v. Havender*, 11 A.2d 331, 343 (Del. 1940) ("What constitutes unreasonable delay is a question of fact dependent largely upon the particular circumstances. No rigid rule has ever been laid down.").
[44] *Id.*; *Fike v. Ruger*, 752 A.2d 112, 113 (Del. 2000).

schedule for Palmer.[45] Although I believe that Richard knew that the Cousins did not have record title for Palmer and had made no payments to Ernest and Anna far earlier than that,[46] it is, to my mind, clear that he was under no misimpression of those facts by Spring of 1999. Indeed, Richard's expression of his supposed shock upon "learning" these facts was some of his least convincing testimony. I believe he knew them earlier and I conclude that he knew by the Spring of 1999 that Charles and Michelle intended to purchase Palmer from Anna without him, for the simple reason that he was asked if he wished to participate and chose not to do so.[47]

Despite knowing all these critical facts by, at latest, the Spring of 1999, Richard waited until December 2002, more than three and a half years later, to file his stale claims. This was also more than three years after Charles and Michelle actually purchased Palmer from Anna. I cite to this three-year period because it is more than tolerably indulgent of Richard. In situations when a claim in equity resembles or is identical to a legal claim, this court, in conducting a laches analysis, will usually look to

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[45] JX 9.

[46] I find it implausible that Richard believed that the Cousins were, on the rents they were receiving, paying off both the Palmer and 36 Beach construction loans. Moreover, I cannot and will not ignore Richard's tax filings, in which he swore (by omission) that he did not own the Palmer Property. At best, I believe that Richard thought that he would have a chance to go in with Charles and Michelle if and when the Cousins acquired enough capital to buy Palmer from Anna. This was an understanding among the Cousins and not any belief that the Cousins actually had title, legal or equitable. Put bluntly, I do not believe that Richard thought the Cousins had title at any time, as there is no reasonable basis for him to have harbored that belief.

[47] Furthermore, during the many years since Ernest bought Palmer, Richard had more than ample opportunities to "discover" the facts upon which his suit was based. Indeed, far from being a blindly trusting Cousin, Richard consulted an attorney over other disputes with Charles and Michelle in 1995 regarding the ownership of certain property.

the analogous legal claim's relevant statute of limitations for guidance.[48] Thus, for claims of breach of contract or fiduciary duty, this court has (as Charles and Michelle suggest I do here) looked to 10 *Del. C.* § 8106's three-year period by analogy. Although it is not clear that the three-year period is apt for all of Richard's claims,[49] three years is the extreme and absolute limit that he had to bring his claims, and he failed to file within that period. Thus all of his claims are clearly untimely — particularly those that arise out of Ernest's purchase of Palmer in 1994.

But, to strictly look to the three-year period here (which Richard fails anyway) would disserve the independent purposes served by the more flexible equitable bar of laches. The maxim that "equity aids the vigilant, not those who slumber on their rights"

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[48] *Wright v. Scotton*, 121 A. 69, 73 (Del. 1923) ("Under ordinary circumstances, a suit in equity will not be stayed before, and will be stayed after, the time fixed by the analogous statute of limitations at law.").

[49] To clarify, Richard's constructive trust claims, premised on supposed breaches of fiduciary duty, readily suggest 10 *Del. C.* § 8106 as a guiding statute of limitations. But Richard's resulting trust claim, seeking to enforce an informal understanding in equity that was legally insufficient under contract law, exists as a pure equitable claim, and as such would be subject to the traditional laches analysis in equity. *See Kirby v. Kirby*, 1989 WL 111213, at *4-6 (Del. Ch. Sept. 26, 1989) (noting at length the differences between the two laches analyses depending on whether an analogous statute of limitations exists); *see also United States Cellular Investment Co. of Allentown v. Bell Atlantic Mobile Systems*, 677 A.2d 497, 502 (Del. 1996) (noting the traditional form of laches may not be applicable where an analogous statute of limitations exists); *Nationwide Mut. Ins. Co. v. Starr*, 575 A.2d 1083, 1088-89 (Del. 1990) (listing factors to consider in a traditional analysis). Consistent with this reasoning, in *Hudak*, the Supreme Court indicated that traditional laches analysis factors, such as changes in the parties' positions and intervention of rights, would be appropriate in analyzing a claim for resulting trust. *Hudak v. Procek*, 727 A.2d 841, 843 (Del. 1999). Nonetheless, Charles and Michelle have cited to § 8106 as the appropriate analogous statute for all of Richard's claims, perhaps because they did not focus on the distinction between Richard's claims, or perhaps because the nature of a resulting trust claim involves the enforcement of a shared understanding, which although not compliant with the formal requirements of the law of contracts in land, is nonetheless enforceable in equity; in other words, that a resulting trust claim is akin to an equitable action that, in the words of 10 *Del. C.* § 8106, is "based on a promise."

is oft-quoted because it makes good sense.[50] Here, that maxim carries particular force because Richard is seeking a kind of relief akin to an injunction, by relying on equitable doctrines such as resulting and constructive trust to obtain a judicial order making him a 50% owner of Palmer by declaration. Relief of that kind operates no differently than a mandatory injunction and Richard's request for such relief, merely by being pending, makes it nearly impossible for Charles and Michelle to sell the Property until this case is finally resolved.[51] And, because of the nature of the equitable claims that Richard advances, the court is required to act on the basis of evidence of informal understandings and course of dealing, a task that has been rendered far less trustworthy because many of the events at issue are long past due to Richard's indolence in discovering and promptly pressing his claims. In circumstances like those here, the full luxury of a three-year statute of limitations designed for monetary damage suits ill-fits the application of the equitable doctrine of laches. For all of these reasons, I conclude that Richard's torpor here constitutes laches.

IV. Conclusion And Final Judgment

For the foregoing reasons, judgment shall be entered for Charles Malizia and Michelle Malizia on Richard Quill's claims and his claims are DISMISSED.

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[50] *Adams v. Jankouskas*, 452 A.2d 148, 157 (Del. 1982); Def. Op. Br. at 18.

[51] *See Certainteed Corp. v. Celotex Corp.*, 2005 WL 217032, at *6 (Del. Ch. Jan. 24, 2005) ("A claim for specific performance is a specialized request for a mandatory injunction, requiring a party to perform its contractual duties. Like any request for an injunction, such a claim necessarily invokes a stricter requirement for prompt action by the plaintiff, and a plaintiff may not wait the full period of three years set forth in § 8106 to seek such relief. Laches, rather, will arise much earlier, if a plaintiff sits on its claim and does not demand prompt action.") (citations omitted).

Judgment shall be entered for Richard Quill on Charles and Michelle Malizia's joint counter claim and that claim is DISMISSED.

The parties shall each bear their own costs.

IT IS SO ORDERED.